



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,110	07/15/2005	W Michael Bissonnette	80311-256486	9031
26694	7590	09/11/2008		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998				
EXAMINER VALENTI, ANDREA M				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
09/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,110

Applicant(s)

BISSONNETTE ET AL.

Examiner

ANDREA M. VALENTI

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 216-233 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 216-221 and 223-233 is/are rejected.
- 7) ☒ Claim(s) 222 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 216, 217, 218, 219, 223, 220, and 221 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,067,275 to Constance in view of U.S. Patent No. 4,976,064 to Julien, U.S. Patent No. Des. 416, 102 to Schulman and U.S. Patent No. 5,555, 676 to Lund.

Regarding Claims 216, 219 and 223, Constance teaches a self-contained, tabletop aeroponic or hydroponic garden, comprising: a base (Constance Fig. 1 #54); a chamber (Constance #12) supported on the base, the cover defining a plant opening adapted to support a plant (Constance #20); a display panel (Constance Fig. 1 #44 and 48) located on the base, the display panel being in communication with the controller, wherein the display panel includes an add nutrient indicator that operates on a timed nutrient cycle (Constance abstract);

Constance is silent on the chamber including an open upper portion and a sealed lower portion for storing a liquid nutrient solution; a cover removably supported on the open upper portion of the chamber. However, Julien teaches a chamber including an open upper portion and a sealed lower portion (Julien Fig. 1 #1) for storing a liquid nutrient solution; a cover (Julien Fig. 1 #4) removably supported on the open upper

portion of the chamber. It would have been obvious to one of ordinary skill in the art to modify the teachings of Constance with the teachings of Julien at the time of the invention for ease of cleaning and routine maintenance.

Constance as modified is silent on a photoradiation hood supported above the cover by an adjustable support arm extending upward from the base, the photoradiation hood including an artificial light source; However, Schulman teaches a photoradiation hood supported over a plant and having a base (Schulman Fig. 1 and 2). It would have been obvious to one of ordinary skill in the art to modify the teachings of Constance with the teachings of Schulman at the time of the invention to promote healthy plant development. The modification is merely the use of a known technique to improve a similar device in the same way. Constance as modified by Schulman teaches a controller (Schulman Fig. 1 and 2 the buttons and switches at the base of the light) located on the base, the controller adapted to switch the artificial light source on and off on a timed light cycle (merely means "capable of" and Schulman is capable of this function, applicant has not claimed any structure to perform the function).

Constance as modified is silent on a power cord adapted to plug into a household outlet and provide power to at least one of the photoradiation hood, the controller, and the display panel. However, Lund teaches it is old and notoriously well-known to use a power cord in a hydroponic device to send power to the controller and display panel (Lund Fig. 1 #53). It would have been obvious to one of ordinary skill in the art to modify the teachings of Constance with the teachings of Lund at the time of the invention as a cost efficient energy source.

Regarding Claim 217, Constance as modified teaches further comprising: a liquid level sensor located within the chamber; and an add liquid indicator located on the display panel, wherein the add liquid indicator is adapted to activate when the liquid level sensor detects that the liquid nutrient solution in the sealed lower portion of the chamber drops below a predetermined level (Lund Col. 4 line 53-67)..

Regarding Claim 218, Constance as modified teaches further comprising: a timing cycle selector located on the display panel, wherein the timing cycle selector is adapted to change at least one of the timed nutrient cycle and the timed light cycle (Constance #48 and Lund Col. 4 line 53-67).

Regarding Claim 220, Constance as modified teaches a pump located in the sealed lower portion of the chamber (Constance inside #44 element #46).

Regarding Claim 221, Constance as modified teaches a controller adapted to switch the pump on and off (Constance is "capable of" and Lund Col. 4 line 53-67).

Claims 224 and 233 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,067,275 to Constance in view of U.S. Patent No. 4,976,064 to Julien, U.S. Patent No. Des. 416, 102 to Schulman and U.S. Patent No. 5,555, 676 to Lund as applied to claim 216 above, and further in view of U.S. Patent Pub. No. 2002/0184820 to Mauney.

Regarding Claims 224 and 233, Constance as modified is silent on a door connected to the cover. However, Mauney teaches a hydroponic plant chamber with a door in the cover of the chamber (Mauney #65). It would have been obvious to one of

ordinary skill in the art to further modify the teachings of Constance with the teachings of Mauney at the time of the invention for ease of access to the chamber as taught by Mauney. The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results.

Claims 225, 226, 227, 228, 230, 231, 232 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,067,275 to Constance in view of U.S. Patent No. 4,976,064 to Julien, U.S. Patent No. Des. 416, 102 to Schulman and U.S. Patent No. 5,555, 676 to Lund as applied to claim 216 above, and further in view of U.S. Patent No. 3,137,096 to Hopkins, U.S. Patent No. 3,812,619 to Wood and U.S. Patent No. 4,403,443 to Valente.

Regarding Claims 225 and 232, Constance teaches a basket with an upper support rim (Constance #38) and a lower ring with central opening (Constance the ring is the bottom and opening is #34), but is silent on the seed cartridge comprising: a net basket including a plurality of substantially vertical ribs extending downward from the upper support rim, each substantially vertical rib defining a substantially vertical channel, wherein adjacent pairs of the substantially vertical ribs define a window there between. However, Julien teaches vertical ribs and adjacent pairs of vertical ribs define windows there between (Julien #6). It would have been obvious to one of ordinary skill in the art to modify the teachings of Constance with the teachings of Julien at the time of the invention to promote root growth as taught by Julien.

Constance as modified by Julien is silent on the Vertical ribs defining channels. However, Hopkins teaches it is known in the art to utilize vertical ribs to define channels (Hopkins #13 and 14). It would have been obvious to one of ordinary skill in the art to modify the teachings of Constance as modified by Julien with the teachings of Hopkins at the time of the invention to facilitate air and water circulation to roots. The modification is the application of a known technique to a known device ready for improvement to yield predictable results.

Constance as modified teaches an inert material substrate (Constance #24), but is silent on explicitly teaching a hydrophilic cellular substrate located within the net basket; a seed supported by the hydrophilic cellular substrate. However, Wood teaches a hydrophilic cellular substrate located within the net basket; a seed supported by the hydrophilic cellular substrate (Wood Col. 1 line 29-33, line 60-61; Col. 8 line 54-55; Col. 9 line 26). It would have been obvious to one of ordinary skill in the art to modify the teachings of Constance with the teachings of Wood at the time of the invention since the modification is merely the simple substitution of a known alternate substrate yielding predictable results to protect dormant seeds and to sustain germination as taught by Wood (Wood Col. 1 line 34-37).

Constance as modified is silent on a seal located over the upper support rim of the net basket, the seal defining a central aperture and a plurality of substantially radial slits extending outwardly from the central aperture. However, Valente teaches a seal defining a central aperture and a plurality of substantially radial slits extending outwardly from the central aperture (Valente #7 and 9) that fits over the rim of a plant container. It

would have been obvious to one of ordinary skill in the art to modify the teachings of Constance with the teachings of Valente at the time of the invention to prevent spillage and contamination as taught by Valente (Valente abstract). The modification is merely the use of a known technique to improve a similar device in the same way.

Regarding Claim 226, Constance as modified teaches the lower ring of the net basket defines a substantially horizontal channel located interior to the net basket (Constance the combination of the bottom that has aperture #34 and it meets the sidewall creates a horizontal channel).

Regarding Claim 227, Constance as modified teaches the substantially vertical channels defined by the substantially vertical ribs are located interior to the net basket (Julien #6 and Hopkins #13 and 14).

Regarding Claim 228, Constance as modified teaches each window includes an upper border and a lower border, and the upper border is located at a greater vertical distance from the upper support rim than the lower border is from the lower ring (Julien Fig. 1 #6 first ring from bottom is closer to bottom then the first ring is greater distance from the rim).

Regarding Claim 230, Constance as modified teaches the seal is opaque (Valente Fig.1 #5 shows the seal is not clear).

Regarding Claim 231, Constance as modified is silent on the seal includes labeling. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Constance at the time of the invention since the modification is merely an aesthetic design choice to increase consumer appeal and

does not present a patentably distinct limitation over the prior art of record [*In re Seid*, 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947)].

Claim 229 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,067,275 to Constance in view of U.S. Patent No. 4,976,064 to Julien, U.S. Patent No. Des. 416, 102 to Schulman and U.S. Patent No. 5,555, 676 to Lund as applied to claim 216 above, and further in view of U.S. Patent No. 3,137,096 to Hopkins, U.S. Patent No. 3,812,619 to Wood and U.S. Patent No. 4,403,443 to Valente as applied to claim 225 above, further in view of U.S. Patent No. 4,976,064 to Young et al..

Regarding Claim 229, Constance as modified is silent on placing a germination cap over the seed cartridge. However, Young teaches a germination cap over the seed cartridge (Young #12). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Constance with the teachings of Young at the time of the invention to prevent biological contamination as taught by Young. The modification is the application of a known technique to a known device ready for improvement to yield predictable results.

Allowable Subject Matter

Claim 222 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 216-221 and 223-233 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREA M. VALENTI whose telephone number is (571)272-6895. The examiner can normally be reached on 6:00am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea M. Valenti/
Primary Examiner, Art Unit 3643

09 September 2008